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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

NORTH COUNTY COMMUNICATIONS
CORPORATION OF CALIFORNIA,

Plaintiff and Appellant,

v.

VAYA TELECOM, INC.,

Defendant and Respondent.

D069954

(Super. Ct. No. 37-2011-00083845-
CU-BC-CTL)

APPEAL from an order of the Superior Court of San Diego County, Timothy B.
Taylor, Judge. Affirmed.

Law Offices of Dale Dixon and R. Dale Dixon, Jr., for Plaintiff and Appellant.

iCommLaw and Anita Taff-Rice, for Defendant and Respondent.

I

INTRODUCTION

North County Communications Corporation of California (North County) appeals from a postjudgment order awarding attorney fees to Vaya Telecom, Inc. (Vaya) for successfully prevailing on North County's complaint seeking payment of access charges for delivering calls carried by Vaya to North County's customers. North County contends we must reverse the order because the court should not have granted judgment for Vaya.¹ North County further contends we must reverse the order because the court's prior determination that North County was not a bona fide telephone corporation and, therefore, was not entitled to enforce its tariffs precluded the court from awarding Vaya attorney fees under the tariffs' attorney fees provisions. We are unpersuaded by these contentions and affirm the order.

II

BACKGROUND²

A

North County is a competitive local exchange carrier. North County provides inbound-only local telephone service to HFT, Inc. (HFT), a business that provides chat line services. Since at least November 2009, Vaya carried telephone calls to North

¹ We recently affirmed the judgment on appeal. (*North County Communications Corporation v. Vaya Telecom, Inc.* (July 27, 2016, D068170) [nonpub. opn.] review den. Oct. 12, 2016, S237072.)

² We derive our summary in part from the facts described in our opinion affirming the judgment. (See fn. 1, *ante.*)

County, which North County delivered to HFT. Each month, North County billed Vaya access charges for delivering the calls based on rates in North County's tariffs on file with the Public Utilities Commission.

Until 2013, Vaya did not pay any of North County's bills. In 2013, Vaya began paying a portion of the bills. Specifically, Vaya paid for the minutes of use it independently verified from its own call data records at a rate substantially lower than the rate billed by North County. For the bills or portions of bills Vaya did not pay, Vaya claimed North County's charges were invalid for multiple reasons, including that North County did not operate as a bona fide telephone corporation and, therefore, could not enforce its tariffs.

After North County rested its case-in-chief in a bench trial on its complaint for breach of contract and related causes of action, Vaya moved for judgment under Code of Civil Procedure section 631.8. The court granted the motion principally on the ground North County had failed "to offer evidence of damages beyond asking the court to guess or speculate as to the amount of same." As an additional ground for granting the motion as to North County's causes of action for breach of contract and violation of Public Utilities Code section 2106, the court found North County's tariffs did not support the existence of an implied contract because the evidence showed North County was not a bona fide telephone corporation and, therefore, was not entitled to enforce its tariffs. We affirmed the judgment on the principal ground and did not address the propriety of the additional ground. (*North County Communications Corporation v. Vaya Telecom, Inc.*, *supra*, D068170.)

B

The tariffs North County had sought to enforce against Vaya contained provisions entitling the prevailing party in litigation for nonpayment to an attorney fees award. After the court entered judgment in Vaya's favor, Vaya, relying on these provisions, moved for an award of attorney fees under Civil Code section 1717.³ The court granted the motion and awarded Vaya attorney fees of \$499,000.

III

DISCUSSION

A

North County first contends we must reverse the order because the court should not have granted judgment for Vaya. We reject this contention for the reasons stated in our opinion in North County's appeal of the judgment. (See fn. 1, *ante*.)

B

North County next contends we must reverse the order because the court's determination that North County was not a bona fide telephone corporation and, therefore, was not entitled to enforce its tariffs precluded the court from awarding Vaya attorney fees under the tariffs' attorney fees provisions. We disagree.

³ As pertinent to this appeal, subdivision (a) of Civil Code section 1717 provides: "In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs."

As previously noted, we did not address the propriety of this determination in our prior appellate opinion because it was not necessary for us to do so. Assuming, without deciding, the determination was correct, "it has been consistently held that when a party litigant prevails in an action on a contract by establishing that the contract is invalid, inapplicable, unenforceable, or nonexistent, [Civil Code] section 1717 permits that party's recovery of attorney fees whenever the opposing parties would have been entitled to attorney fees under the contract had they prevailed." (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 611.) "The rationale is that Civil Code section 1717 is guided by equitable principles, including mutuality of remedy, and it would be inequitable to deny attorney's fees to one who successfully defends, simply because the initiating party filed a meritless case." (*Rainier Nat'l Bank v. Bodily* (1991) 232 Cal.App.3d 83, 86.)

North County does not dispute its tariffs constituted contracts, its complaint was an action on a contract, and it would have been entitled to attorney fees under the attorney fees provisions of its tariffs had it prevailed on its complaint. Accordingly, the court's determination the tariffs were unenforceable did not preclude the court from awarding attorney fees to Vaya under these provisions.

IV

DISPOSITION

The order is affirmed. Respondent is awarded its costs on appeal.

McCONNELL, P. J.

WE CONCUR:

IRION, J.

PRAGER, J.*

* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.